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D.B. CIVIL WRIT PETITION NO.7163/2007

Petitioners

(1) Union of India.
(2) Commander Works Engineer (AF)
(3)Garrison Engineer,MES,Nal

VERSUS

Respondents

(1)Jugal Kishore
(2)Central Administrative Tribunal,Jodhpur

Date of Order:- 01.11.2007

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. BHANWAROO KHAN,J.

Mr.Kuldeep Mathur, for the appellant.

Heard learned counsel for the parties. This petition is directed to challenge the order passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in contempt petition No. 24/07 (Original Application No.103/2005).

The respondent No.1 had preferred the original application before the Tribunal for grant of relief notwithstanding that he has been promoted firstly by order dated 05.03.2004 with effect from 15.10.1984 and, thereafter, by another order dated 12.08.2004 he has been promoted to higher scale on 15.10.85 but the fixation in accordance with the promotion had not been made, until the time of the filing of the original application. In reply, so far as facts of effecting promotion, with retrospective dates is concerned were not in dispute. The present applicant before us who is non-applicant in the original application in their return had submitted that the matter regarding pay fixation of applicant is pending consideration before higher authority. Taking note of

that part of the pleading in the return filed by the non-applicant, the Tribunal made the order dated 23.11.2006 with direction that 'by now, even more than 9 months have elapsed from the date of such averments were made but nothing substantial seems to have been done. To shorten the litigation, we direct that the competent authority shall take decision in the matter and such decision should be placed on record before the next date. We are giving two months time to the competent authority for taking such decision in the matter.'

The matter was required to be listed after two months.

Thereafter, Misc. Application No. 33/07 was moved on behalf of the present applicant before the Tribunal seeking extention of time up to 11.5.2007 for implementing the direction dated 23.11.2006 in which it was ordered that the respondents are directed to ensure that the pay of the applicant should be fixed within the given time and the original application shall listed for hearing on 7.5.2007 and ultimately it was taken up to 11.5.2007. On that date the original application was disposed of, noticing that in para 4 of the reply i.e. at page 16 of the paper-book. The respondent have admitted that the statement of refixation of pay of the applicant has been prepared and submitted to the higher authority for its sanction cum approval which is pending consideration. The reply in this case was filed as early as on 16.1.2007 which also noticed that another original application No. 105/2005, vide which similar controversy was settled. On the basis of the statement of refixation and consonance with earlier

direction, the application was disposed of with the following direction:

> "The Respondents are directed to pay the arrears within a period of two months from today. If the payment is delayed the applicant is entitled to get interest on the arrears with effect from 11.07.2007 @ 10% per annum, till the date of payment."

When the contempt petition was filed on 3.9.07 and notices were issued to the respondent an order dated 23.11.2006 was passed that compliance of order dated 11.5.07 has not been made inasmuch as the Ministry has withdrawn that very order on the basis of which refixation and payment was directed by the Tribunal vide its order dated 26.5.2007. In these circumstances the Tribunal was of the view that in this manner, the effective direction issued to the Tribunal dated 23.11.2006 for the compliance of which, direction was sought twice, the adjudication by tribunal cannot be rendered nugatory in this manner by the respondents and directed the respondents for the same . The officer appearing before the Tribunal who was Commander Works Enginer, MES, Air Force Bikaner made a statement by giving undertaking to make payment and make compliance of the order of Tribunal dated 23.11.2006 within two weeks from today from the date of order dated 24.10.2007 which is under challenged in this writ petition. The time sought was allowed and the contempt petition was ordered to be placed on 12.11.07.

It is in the aforesaid circumstances, this petition has been filed on behalf of the employers. In view of the change circumstances, directions to respondents for re fixation and payment of arrears in term of order dated 23.11.2006 and 11.5.07 are made. Along with the writ petition, petitioners have placed on

record the communication dated 17.9.07 receipt on fax, addressed to the respondent applicant stating therein that implementation of Central Administrative Tribunal, Jodhpur order dated 11.5.07 has been placed before the higher authority for obtaining the sanction from Govt. of India Ministry of defence. The delay in implementation of above order for obtaining sanction from ministry of defence and reviewing the promotion order by Competent Authority be condoned.

There is no dispute that before reviewing the promotion orders issued by Competent Authority, no notice was given to the respondent applicant. It has been alleged in the writ petition that review DPC conversed after judgment dated 11.5.07 and 2.7.07, has re fixed the date of promotion instead of 15.10.84 to 29.12.93 that is in respect of the first order. Apparently, this order has been passed without issuing notice to the respondents, whose vested rights under the promotion order and that too after adjudication by the Tribunal were sought to be withdrawn by nullify the Tribunal's order suffered on their own submissions by the respondents. There was no infirmity in the promotion of the respondents. Apparently, the order having been made without notice to the affected interests cannot be held against him to deny the vested rights under adjudication order.

Faced with the situation learned counsel for the petitioner made a prayer for quashing the order dated 11.5.07 itself on the basis of subsequent event.

We are unable to commend this prayer, at this stage when the order of promotion passed in favour of respondent-applicant has been tinkered with to the detriment of respondent

applicant without issuing notice to him as well as without disclosing the reason for such alteration in the date of his promotion. The order deserves to be ignored being void ab initio. The illegally committed by petitioners cannot be sustained by invoking extra adjudicating jurisdiction.The Tribunal was justified for not countenancing defence at the late stage. Therefore, we decline to interfere in the order passed by the Tribunal. However, the amount which is yet to be paid to the respondent as per the direction of the Tribunal and undertaking before the Tribunal shall be subject to the modification in the order of the date of promotion if any made in accordance with law.

Writ petition is dismissed. No costs.

(BHANWAROO KHAN),J. **(RAJESH BALIA),J.**

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